

REMARKS

The indication of allowable subject matter in claims 4, 16 and 17 is acknowledged and appreciated. In view of the following remarks, it is respectfully submitted that all claims are in condition for allowance.

As a preliminary matter, it is respectfully submitted that the finality of the outstanding Office Action is premature. The Examiner alleges that the new ground of rejection against claim 7 was necessitated by amendment. However, in the amendment filed September 2, 2008, claim 7 was changed only by deleting one feature (i.e., “holder made of transparent material to have same length ...”) and correcting a minor antecedent informality. The deletion of the aforementioned feature broadened claim 7 with no narrowing amendment being made. Accordingly, there is no basis for the Examiner to change the §102 rejection over EP ‘030 to a §103 rejection. That is, if the §102 rejection was proper prior to the broadening amendment, it should have been maintained after the broadening amendment rather than changed to a §103 rejection. In this regard, it is noted that Applicants traversed the §102 rejection over EP ‘030 because EP ‘030 does not include a second electrode ***buried in the at least one insulating holder***.

In contrast, the alleged second electrode 3 of EP ‘030 is arranged on the outer surface of the alleged holder 5 rather than buried therein. The Examiner now relies on JP ‘150 as allegedly disclosing a buried second electrode. As such, the new ground of rejection was not necessitated by amendment, but rather, was necessitated by the arguments traversing the Examiner’s interpretation of EP ‘030. Accordingly, it is respectfully requested that the finality of the outstanding Office Action be withdrawn, and for the enclosed response be treated as a response to a non-final Office Action.

Claims 1 and 7 are independent and stand rejected under 35 U.S.C. § 103 as being unpatentable over JP '150 in view of EP '030. This rejection is respectfully traversed for the following reasons.

In order to expedite prosecution, Applicants' representative initiated a telephone interview with Examiner Roy. Applicants and Applicants' representative would like to thank Examiner Roy for her courtesy in conducting the interview and for her assistance in resolving issues. As a result of the interview, it was agreed that the finality of the Office Action would be withdrawn in view of the remarks above, and that the pending rejection against claim 7 would be withdrawn for the reasons that follow. The Examiner further indicated that the rejection of claim 1 would be reconsidered upon receiving this response. A summary of the interview discussion in relation to the prior art rejections is set forth below.

Specifically, with respect to claim 1, JP '150 does not disclose "a second electrode ... that is provided to have a *predetermined interval to the airtight container*" (one exemplary embodiment shown in Figure 3 of Applicants' drawings). As defined by Merriam-Webster Online dictionary, an interval is "a space between objects." In contrast, as shown in Figures 3-4 thereof, the alleged second electrode 3 of JP '150 is in direct surface-to-surface contact with the alleged container 1 so that no space exists therebetween.

With respect to claim 7, for reasons similar to those discussed above regarding claim 1, the Examiner's position is improper in that JP '150 does not disclose "a second electrode buried in the at least one insulating holder *to have a predetermined interval to the airtight container*" (one exemplary embodiment shown in Figure 14 of Applicants' drawings).

"All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplimatic Engineering Co.*, 819 F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as the independent claims are patentable for the reasons set forth above, it is respectfully submitted that all claims dependent thereon are also patentable. In addition, it is respectfully submitted that the dependent claims are patentable based on their own merits by adding novel and non-obvious features to the combination.

Based on the foregoing, it is respectfully submitted that all pending claims are patentable over the cited prior art. Accordingly, it is respectfully requested that the rejections under 35 U.S.C. § 102/103 be withdrawn.

CONCLUSION

Having fully responded to all matters raised in the Office Action, Applicants submit that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below. To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,
McDERMOTT WILL & EMERY LLP



Ramyar M. Farid
Registration No. 46,692

**Please recognize our Customer No. 53080 as
our correspondence address.**

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 RMF:MWE
Facsimile: 202.756.8087
Date: March 15, 2009